

Minutes of Public Meeting
Environmental Quality Commission
Room 111 Capitol Annex, Frankfort, Ky.
February 22, 2001--2:00 to 5:00

EQC Commissioners and Staff

Aloma Dew, Chair
Betsy Bennett, Vice-Chair
Patty Wallace
Bob Riddle
Gary Revlett
Jean Dorton
Leslie Cole, Director
Erik Siegel, Asst. Director
Frances Kirchhoff, Adm. Asst.

Speakers/Representatives Present

Geoffrey Young, Asst. Dir. Kentucky Division of Energy
John Hornback, Director, Division of Air Quality
Fritz Wagener, U.S. Environmental Protection Agency
Jack Wilson, Division of Water
Allen Luttrell, Deputy Commissioner, Dept. of Surface Mining
Larry Adams, Permits Director, Dept. of Surface Mining

Opening Remarks

Environmental Quality Commission (EQC) Chair Aloma Dew opened the meeting at 2 pm. Approximately 25 people were in attendance. The Chair introduced the newest member of the commission, Jean Dorton from Paintsville, Kentucky. The purpose of the meeting was to review the energy crisis and its impacts in Kentucky; receive a briefing from the U. S. Environmental Protection Agency (EPA) on the state's water quality antidegradation rule; discuss the state's watershed initiative; and discuss the lands unsuitable for mining petition for the Pine Mountain Settlement School.

The first order of business

A motion was made by Betsy Bennett and seconded by Gary Revlett to approve the minutes of EQC's January 18 meeting. Motion passed unanimously.

Energy Crisis

Chair Dew introduced Geoff Young, Assistant Director for the Department of Energy. Mr. Young reported that from January 2000 to January 2001 natural gas prices rose 50 percent. He explained that the price of natural gas has increased due to strong economy and an increase in demand causing a shortage in supply. Because natural gas prices have been low for several years, there has been little exploration for new gas. Consumers can cut cost by using energy-saving choices as outlined the booklet "Energy Savers" available through the Division of Energy.

Mr. Young next discussed the problem with deregulation and the energy crisis in California. He said the California legislature required utility companies to sell their generating plants and buy power through the spot market. It also allowed the utilities to cut their investments in energy efficiency. Those decisions were the main cause of the energy problems now facing California. The problem is not as dramatic in Kentucky, but changes are needed. There is a subtle yet powerful incentive for the companies to sell more electricity and not to help customers conserve energy. One thing Kentucky can do is set up a system whereby the utility companies have an economic incentive to help customers conserve energy and share in the savings. Some states have done this achieving significant results for the consumer and the utility company.

The Chair next recognized John Hornback, Director of the Division for Air Quality, and Carl Millanti to comment on proposed power plants in Kentucky. A map was handed out showing the distribution and location of the projects currently known about across the state. As many as 21 new power plants may be located in Kentucky in

response to demand and utility deregulation. Most of these plants will use natural gas as their energy source. Currently there are 18,000 megawatts generating capacity in the state. Of these, 89 percent are coal fueled. Applications have been proposed for 12,000 more megawatts. The majority of these, 65 percent will be natural gas fueled. However, because of the way permits are issued, the capacity may be limited by numbers of hours on-line generating. Most of the natural gas fueled facilities intend to operate only when the demand is the highest mainly in the summer months (peak plants). How much time they will operate is unknown at this time. After they are built and the market plays itself out, it will be determined how much electricity can be generated at a profit. It is clear that a lot of capacity is being proposed. Far more than what is projected for the electric growth needs in Kentucky. Many of the new facilities will not going to be regulated by the Public Service Commission. They are merchant facilities selling directly to the grid with the power to be available to Kentucky energy companies and other state's energy companies.

Carl Mallanti with the Division of Air Quality spoke about the new emission limitations effecting future and existing power plants. Kentucky is one of 19 states required by U.S. EPA to reduce emissions of nitrogen oxide. The Division of Air Quality will have 6 new regulations commonly referred as the NOx Sip Regs. Kentucky is mandated by the U.S. EPA to reduce emissions of nitrogen oxides from 164 thousand tons to 36 thousand tons. Even with the new projects, the limit will still be 36,000 tons. Mr. Hornback explained the "trading program." This program will allow companies and smaller facilities with emissions over the U.S. EPA mandated emissions cap to purchase credits from other nearby states to assist in the overall compliance with the standard. Questions and discussion followed the presentations.

Water Quality Antidegradation Rule

The next agenda item was a discussion of the state's water quality antidegradation rule. Federal law requires states adopt an antidegradation policy which declares existing uses of a water body must be maintained and protected. The U.S. EPA has disapproved Kentucky's antidegradation policy after it found it to be deficient.

Mr. Fritz Wagener, Water Quality Standards Coordinator from the U. S. EPA Region 4 Office, Atlanta, Georgia was invited to discuss the rule and how EPA will promulgate its own antidegradation rule for Kentucky.

Mr. Wagener said that EPA maintains an oversight program in Kentucky authorized to carry out the Clean Water Act. His office works in partnership with the state. The water quality standards are set up to protect water quality in the state. Numeric levels are given to protect the water for targets such as the protection of aquatic life or human health, etc. The antidegradation policy does not necessarily deal with the criteria levels. State regulations prevent degradation from going beyond the criteria level if the waters won't support the uses.

Antidegradation applies when pollutants are going to be added to the water causing more pollution and not a prevention of degradation, but a method to analyze when that is appropriate. The governing part of the federal regulation dealing with antidegradation involves three tiers of water quality.

- Tier I --Protection of existing uses.
- Tier II--Protection of high quality waters.
- Tier III --Protection of outstanding national resources waters.

The existing level of water quality is the target; maintaining what is there, no degradation. There are five components a state should do to protect high quality waters. The questions a state should ask itself and answer is:

- Does the proposed degradation require a state decision under Tier II.
- Is it necessary to degrade the water and lower the water quality.
- When are the social/economic issues more important than the water quality.
- Get public review/input and let the public know of the state's decision to allow degradation.
- Documentation of a final state decision taking into account the information from the applicant and the public comments.

These are the federal requirements. Kentucky chose the designational approach, an approach slightly different from the desired EPA approach (the parameter-by-parameter approach). Included in the designated approach category of waters tested are the Kentucky Wild Rivers, Outstanding State Resource Waters (waters that have been rated as excellent using the biological index) and waters included in the Reference Reach Streams network. EPA's objection for Kentucky using this option is that it did not provide coverage for a sufficient number of waters. EPA feels there are waters are being left out, waters that might be rated as just 'good' under these indices.

In August 2000, EPA disapproved the state's antidegradation regulations. Until EPA replaces the regulations, Kentucky's existing antidegradation regulations still apply to all activities in the state. The next step in the process is for EPA to promulgate a federal standard, which would replace the state antidegradation standard. But remember EPA and Kentucky are a partnership working together to try and come to an agreement. Questions and discussion followed.

Watersheds

Mr. Jack Wilson, Director for the Division of Water, reviewed the status of the state's Watershed Initiative and implementation of the Total Maximum Daily Load (TMDL) program.

Kentucky is divided into five basins or basin groups.

- The Kentucky
- The Licking/Salt
- The Cumberland four rivers
- The Green Tradewaters
- Big and Little Sandy
- Tygarts

The Watershed approach is a cycle in 5 phases.

- Scope and data gathering
- Assessment and monitoring
- Prioritizing areas
- Formal plan for development for improvement
- Implementing the plan

Where are we?

- At Kentucky River basin -- in 4th year. Completed basin assessment report and a lot of priority areas.

- Licking and Salt – data is in and waiting for finalization.
- Cumberland and four rivers–data collection completed. Data analysis and assessment is underway.
- Green and Tradewater – Finalizing basin status report and monitoring plan by the end of the month. Status report is in final draft.
- Tygarts and Big Sandy and Little Sandy – Basin coordinator, Ted Withrow, just beginning.

Positive from the watershed approach

- Expanded Watershed Watch and raising awareness
- Creation of framework of co-operation
- Developing resources; a Funding Directory and Planning Guide are in draft form
- Co-hosting a workshop with the University of Louisville
- Urban site design workshop later this year
- Drinking water SRF funds will be ready to purchase land to protect source water Kentucky is only one of three states doing that
- A model conservation easement in final draft
- To standardize and store data to be shared among agencies.

Other things involved in the watershed process is the issuance of KPDES Permits

It is the Division of Water's intent is to have the KPDES permits issued on the same 5-year cycle as the watershed planning and management.

Another tool is the Total Maximum Daily Load (TMDLs) A TMDL is a:

- Process of reducing the load to restore the polluted stream to its designated use.
- Document that contains description of the problem, the data, the calculations, etc. used to determine the TMDL, existing load, load allocation, the load reduction and the implementation plan.
- Analysis is the total maximum daily load for that body of water.

Where are we in the TMDL Program?

- Kentucky produced it last 303 D list of impaired waterways in 1998. The next 303-D list is due in April 2002.
- Required to provide EPA a schedule for developing all the TMDL on the 1998 list. The current schedule goes through 2011.

What have we done?

- 1999 – 2000 we had 26 TMDLs scheduled have approval for 21 and approval for 8 de-listings.
- 2001 - we have 16 TMDLs scheduled, 8 others in some stage of development, 4 being developed by EPA contractors and 1 new stream proposed for de-listing.

Plans are being developed for other TMDLs. Funding Sources being used are

- 319 Grants - 3 TMDL in the year 2000. There are 4 grant proposals in 2001
- We are expecting more 106 funding. Kentucky may get \$600,000 in added money for TMDL or the watershed program as a whole.
- Modeling and developing of TMDL are being done in conjunction with the watershed framework.

Mr. Wilson said that the Division might not get to all 20 TMDLs in first cycle of the watershed framework, just too many impaired waters in the basin and not enough resources. Discussion and questions followed.

Lands Unsuitable for Mining Petition --Pine Mountain Settlement School

Allen Luttrell, Deputy Commissioner, and Larry Adams, Permits Director, Department for Surface Mining Reclamation and Enforcement, provided an overview of the lands unsuitable petition for the Pine Mountain Settlement School.

On November 13, 2000, a petition was filed to declare 5,226 acres of land in Harlan County surrounding Pine Mountain and the historic Pine Mountain Settlement School as unsuitable for all types of coal mining operations. (One petitioner and 25 intervenors - 23 are land owners against the petition.) Hearings will be held February 26 and 27. Sixty days after the public hearings, a decision will be made by Secretary James E. Bickford to deny or process the petition.

Commissioner Patty Wallace read a draft resolution stating EQC's concern for the protection of the Pine Mountain Settlement School. A motion was made by Jean Dorton and seconded by Betsy Bennett to forward this resolution to Governor Paul E. Patton and Secretary Bickford for consideration. Discussion followed. With a wording change, the resolution passed and is attached and made a part of these minutes.

Other Business

Leslie Cole reported that the budget for EQC is 43 percent depleted with 58 percent of the budget year lapsed. A search continues to fill the vacancy on the EQC staff. Nominations are being received for Earth Day Awards. The next meeting is scheduled for March 27 for a tour of the slurry spill and a public forum at the Jenny Wiley State Park. There being no further business, the meeting adjourned at 5:00 pm.

Signed

Date